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14 and OTTOMOTTO LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 WAYMO LLC,
19 Plaintiff,
20 v.
21 UBER TECHNOLOGIES, INC.,
22 OTTOMOTTO LLC; OTTO TRUCKING LLC,
23 Defendants.

Case No. 3:17-cv-00939-WHA

**CORRECTED DECLARATION OF
WENDY J. RAY IN SUPPORT OF
DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S CORRECTED
OPPOSITION TO WAYMO'S
MOTION FOR ORDER TO SHOW
CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN
CONTEMPT**

Date: August 16, 2017
Time: 8:00 a.m.
Cttrm: 8, 19th Floor
Judge: Hon. William Alsup

Trial Date: October 10, 2017

1 I, Wendy J. Ray, declare as follows:

2 1. I am a partner with the law firm of Morrison & Foerster LLP, counsel of record for
3 Defendants Uber Technologies, Inc. and Ottomotto LLC (collectively “Uber”) in this action. I
4 am a member in good standing of the Bar of the State of California. I make this declaration in
5 support of Uber’s Corrected Opposition to Waymo’s Motion for Order to Show Cause Why
6 Defendants Should Not Be Held in Contempt. I make this declaration based on personal
7 knowledge and, if called as a witness, I could and would testify competently to the matters set
8 forth herein.

9 2. At the time I signed my July 5, 2017, declaration, I believed the information
10 therein was accurate. Since then MoFo has learned additional information that has led to the
11 filing of this corrected declaration.

12 3. As part of its efforts to comply with the March 16, 2017 Order, Uber’s vendor,
13 Stroz Friedberg, forensically collected approximately 235 terabytes of data, including data from
14 nine servers and 148 different custodians. The custodian collection included both email and data
15 from 280 different computers. These efforts uncovered no downloaded materials at Uber.

16 4. On June 1, 2017, I participated in a telephone conference with David Perlson of
17 Quinn Emanuel and Special Master John Cooper, among other counsel, to meet and confer
18 following the Court’s May 31, 2017 deadline in its May 11 order.

19 5. During the telephone conference, I represented that Uber and MoFo did not have
20 the 14,000 files in their possession.

21 6. When Mr. Perlson asked for additional information, I did not provide specifics
22 because I had the Stroz privilege issues in mind.

23 7. Contrary to James Judah’s June 2, 2017 summary (a true and correct copy of
24 which was attached as Exhibit 7 to Waymo’s Motion), I did not make any statements about
25 whether MoFo had any copies, excerpts, or summaries of “downloaded materials.”

26 8. The only downloaded materials (or any copies, excerpts or summaries thereof) that
27 MoFo has in connection with its representation of Uber are such materials, to the extent they may
28 appear excerpted in or as an exhibit to the Stroz Report, which as explained in the declaration of

1 Sylvia Rivera, is listed on the logs and is the subject of on an ongoing privilege dispute. In
2 addition, MoFo has some materials that it received in its role as personal counsel for
3 Levandowski—materials that Levandowski provided to Stroz, and that Levandowski authorized
4 Stroz to provide to MoFo in its role as personal counsel for him, as explained in the July 12, 2017
5 Declaration of Eric Tate (Dkt. 883). Uber has never received copies of these documents and has
6 never had custody or control over them, as they were provided to MoFo solely in connection with
7 MoFo's prior representation of Anthony Levandowski. Indeed, Uber did not know MoFo even
8 had these materials until yesterday.

9 9. Boies Schiller's June 12, 2017 email (attached to Waymo's motion as Exhibit 7)
10 also stated that MoFo may have downloaded materials to the extent they may appear in certain
11 materials Mr. Levandowski and other persons provided to Stroz to which MoFo was given limited
12 access during the investigation under the terms of the Levandowski-Stroz Agreement and the
13 investigation protocol. This statement was provided in an abundance of caution because MoFo
14 could not previously rule out that it may have such material. After further investigation,
15 including checking with an attorney on maternity leave, MoFo has determined that it does not
16 have any such material in its possession. However, as noted in the preceding Paragraph 7, further
17 investigation by MoFo also has revealed that MoFo has some materials that Levandowski
18 provided to Stroz, and that Levandowski authorized Stroz to provide to MoFo in its role as
19 personal counsel , as explained in the July 12, 2017 Declaration of Eric Tate (Dkt. 883). Like
20 Uber, Boies Schiller learned about these documents yesterday.

21 10. As of this date, no response has been received from Stroz with regard to Uber's
22 June 12, 2017 written request to return any downloaded materials to Waymo.

23 11. As of this date, no response has been received from Mr. Levandowski with regard
24 to Uber's June 12, 2017 written demand informing him he was required to instruct Stroz to return
25 any material to Waymo.

26 12. Nina Qi was deposed in conjunction with this litigation on June 22, 2017.

27 13. Uber received Mr. Levandowski's permission, through counsel, to produce the
28 unredacted protocol attached to the March 21, 2016 Levandowski-Stroz Agreement today. A true

1 and correct copy of the March 21, 2016 agreement with the attached protocol is attached as
2 Exhibit A to my July 5, 2017 declaration.

3 I declare under the penalty of perjury that the foregoing is true and correct. Executed this
4 12th day of July, 2017 at Los Angeles, California.

5
6 /s/ Wendy J. Ray
WENDY J. RAY

ATTESTATION OF E-FILED SIGNATURE

I, Arturo J. González, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Wendy J. Ray has concurred in this filing.

Dated: July 5, 2017

/s/ Arturo J. González
Arturo J. González